

## Asbestos

# Builder's Friend Turns Economic Foe



Once considered efficient and safe, asbestos became the universal building material. Subsequent discovery that exposure to the concentrated form is dangerous created serious economic risks for owners selling or leasing structures built between 1951 and 1974. Owners may remove, encapsulate or enclose existing asbestos to avoid potential problems. Certain established legal procedures must be followed for cleanup. Those who take no action risk claims and loss of tenants.

By Judon  
Fambrough

**T**he reputation of asbestos has reversed. In the post World War II era, it was heralded as an effective, efficient building material. Today, many see it as a building owner's nightmare.

The problem does not lie with state or federal laws requiring the removal of asbestos from buildings. The problem lies in the economic risks associated with its presence.

The economic risks are twofold. First, there is the potential problem of health-related lawsuits. Second, there is the potential lack of tenants because of the presence of asbestos.

The economic risks translate into lower building value. As the number of potential buyers declines, lenders become more hesitant to extend loans, and insurance companies become more reluctant to insure. When an insurance carrier can be found, the rates may be higher to cover the augmented risk.

Should the building owner decide to remove the asbestos to alleviate the problem, the cost of abatement may run as high as \$30 per square foot of floor area.

Asbestos, in its naturally occurring, non-concentrated state, presents no known serious health risk. Everyone has been exposed to at least a few particles. Specks have blown in the atmosphere for centuries and carried in major rivers.

The durable, fibrous, non-combustible properties of asbestos suit it as a building material. It was widely used as insulation, sprayed on ceilings and in roofing and flooring products in the 1950s and 1960s. Estimates place its use in the construction of 730,000 buildings nationwide.

Exposure to concentrations of crumbling asbestos is a health risk. Once inhaled, the fibers lodge

in the lungs. It can cause cancer, asbestosis (a lung disease) and mesotheliomias (a disease affecting the lining of the lungs).

The adverse effects from exposure may take 20 to 40 years to appear.

Although the effects may be latent, the threat is real. More than 100,000 workers have died from inhaling asbestos particles. About 200,000 more are expected to die from asbestos-related cancer between now and 2009.

These statistics have caused the presence of asbestos to become a serious concern in the sale and leasing of commercial buildings constructed between 1951 and 1974.

## Few Federal Laws

Interestingly, few federal laws deal with the problem. The existing federal laws are primarily regulations issued by the Environmental Protection Agency (EPA). These laws:

- ban the use of asbestos in the construction of buildings since 1974,
- require all school systems to inspect buildings and provide findings both to parents and employees,
- require furnishing information to the EPA stating when and how asbestos will be removed, transported and disposed of and
- set standards for worker exposure to asbestos during removal.

So far, 32 states have passed legislation dealing with asbestos hazards. Three fourths of the states passed their laws within the past two years. The hibits the transfer of property unless the seller can certify the property is free of hazardous materials. New York recently passed a law requiring an asbestos inspection before a building permit will be issued for alterations.

The only related Texas statute deals indirectly with asbestos. Article 4477-7 of the Texas Civil Statutes, entitled the Solid Waste Disposal Act, regulates disposal of hazardous wastes in the state.

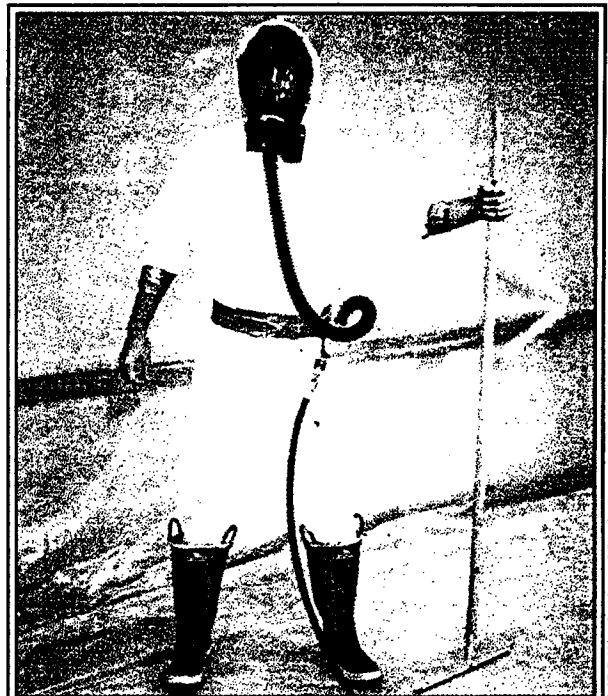
Investors contemplating the purchase of suspect property may require an asbestos inspection before consummating the transaction. For further security, the investor may wish to require an indemnification agreement from the seller for any asbestos-related risks that may appear later.

## Clean-Up Procedures

Lenders who have delinquent liens secured by structures that possibly contain asbestos may wish to conduct an inspection before foreclosing. In some cases, the risk associated with repossessing the building may outweigh the value of owning the property.

Owners of buildings with a known asbestos problem have four alternatives.

First, the asbestos can be removed, the most common means of alleviating the problem. However, removal is expensive, and finding a legal disposal site may be a problem.



Asbestos removal is the most common means of alleviating the problem. Removal is expensive. Workers must use personal protective equipment, and finding a legal disposal site may be a problem.

Second, depending on the type and placement of the asbestos, encapsulation may be used. Encapsulation involves spraying the asbestos with a sealant to prevent its release into the air. However, encapsulation is not effective on deteriorated asbestos material.

Third, again depending on the placement of the asbestos, enclosure may be a possibility. The process involves constructing airtight walls and ceilings around the asbestos.

The major drawback with encapsulation and enclosure is the economic risks associated with the continued presence of asbestos.

Fourth, the building owner may do nothing and run the risk of claims.

If the first alternative is chosen, the removal of asbestos requires a consultant, an architect and a contractor. The consultant and the architect may be the same or members of the same firm. For reasons disclosed later, however, the consultant and contractor should have no business affiliations.

The consultant's tasks are to locate the asbestos in the building and determine both the quantity and type present. The consultant oversees the contractor's activities and conducts air monitoring for the workers' protection. After the asbestos has been removed, the consultant takes air-clearance samples of the building to determine when it is safe to reoccupy.

Once a prospective consultant has been chosen, references should be obtained. In particular, the following facts should be ascertained. Many can be determined by contacting the NAC.

- What is the consultant's general reputation?
- Has the consultant had any citations levied against him or her?
- Has the consultant complied with EPA standards and performed in a timely fashion with past contracts?
- Have any fines been levied against the consultant, or has he or she been involved in contract disputes?
- Has the consultant been on budget?

The architect's job is to prepare the proposal for physically removing the asbestos from the building. If possible, the architect who designed the building may be a good choice. Preparation of the removal specifications may require a 200- to 300-page report, yet the actual removal may take only a day.

The contractor's task is to physically remove the asbestos according to the architect's specifications and in compliance with EPA standards. The contractor notifies the EPA and the Department of Health of the asbestos removal. The contractor also obtains disposal permits from both state and federal governments.

If possible, a contractor from the local area should be chosen. Again references should be secured. One important point to determine is how many times air samples were taken before a building was safe for reoccupation after the contractor finished. This, in part, determines the contractor's efficiency. If the consultant taking the air samples is affiliated with the contractor, the possibility exists for lax air sampling which cost the firm money.

A good place to start in locating a reputable contractor is with the Texas Department of Health (TDH) in Austin. TDH maintains a list of certified contract supervisors who generally are contractors themselves or affiliated with a contracting firm.

TDH also is a good place to check for any past grievances lodged against contractors.



NATIONAL ASBESTOS COUNCIL

The contractor's task is to physically remove the asbestos according to the architect's specifications and in compliance with EPA standards. Air samples are taken before a building is declared safe for reoccupation. This helps determine the contractor's efficiency.

A government document containing an overview of the abatement procedure may be secured from the local library. The 1986 EPA publication is called "Guidance for Controlling Asbestos-Containing Material in Buildings" (call number PB86-116522/REB).

## Owners' Economic Risks

Problems associated with owning an asbestos-containing building are real. In Texas, they are primarily related to economic risks associated with potential lawsuits and lack of tenants rather than compliance with any statutory mandate. The economic risks lower property values because of fewer buyers and lenders and because fewer insurance carriers offer coverage. Investors, owners, lenders and mortgagees alike must address the problem before purchasing, renovating, lending or foreclosing.

Although there are no Texas cases involving asbestos-containing buildings and the Deceptive Trade Practices Act, both the owner and the real estate broker should make full disclosure to potential buyers of the presence of asbestos. If the building was constructed, remodeled or renovated between 1951 and 1974, an inspection may be required prior to any sale in view of *Cameron v. Terrell and Garrett, Inc.* 618 S.W. 2d 535 (Tex. 1981). The case suggests the seller, and possibly the real estate broker, must disclose all facts they *should have known* about the property to the buyer. ☒

*Fambrough is an attorney, member of the State Bar of Texas and a senior lecturer with the Real Estate Center and in agricultural economics at Texas A&M University.*

*A Reprint  
from the*



**REAL ESTATE CENTER JOURNAL**

Director	<b>Dr. Richard L. Floyd</b>
Senior Research Economist	<b>Dr. John Allen</b>
Editor	<b>David S. Jones</b>
Associate Editor	<b>Dr. Shirley E. Bovey</b>
Assistant Editor	<b>Deborah Drew Conrad</b>
Art Director	<b>Robert P. Beals II</b>
Editorial Assistant	<b>Rolanda Warren-Yarbrough</b>
Marketing Analyst	<b>Bobette McFarland</b>
Circulation Manager	<b>Gary Earle</b>
Production Assistants	<b>Emma Kubin, Charles McEuen, Janie Rios, Sandra Tschoepe</b>
Advisory Committee	<b>Doris Farmer, Longview, chairman; Hub Bechtol, Austin; Patsy Bohannon, Midland, James L. Fatheree, Jr., Richmond; Alberto R. Gonzales, Houston; William C. Jennings, Sr., Fort Worth; Fred McClure, Washington, D.C.; David L. Stirton, Houston; Thomas A. Wilder, Hurst; and James N. Johnson, Tyler, ex- officio representing the Texas Real Estate Commission</b>
Typography	<b>Texas A&amp;M University Printing Center</b>
Lithography	<b>Williamson Printing Corporation, Dallas</b>

**Real Estate Center Journal** (ISSN 0893-3332), formerly *Tierra Grande*, is published quarterly by the Real Estate Center at Texas A&M University, College Station, Texas 77843-2115 (telephone 409-845-2031). Comments from readers are welcome.

**Address changes** should include name of the magazine, old and new addresses, real estate license number, telephone number and old mailing label.

**Permission to reprint** is granted for articles and columns, excluding photographs and illustrations, providing proper credit is given the Real Estate Center Journal and the Real Estate Center.

**Views expressed** are those of the authors and do not imply endorsement by the Real Estate Center, the College of Business Administration or Texas A&M University.

**On the cover.** Riverway Properties towers behind a Houston residence where the original owner of the property still lives. Once the site of a sand pit, the development was photographed by Kenneth L. Appelt near Buffalo Bayou off Loop 610.